

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(4) The provisions of paragraphs (b)(1) through (3) of this section are also applicable for purposes of imputing conduct to a contractor.

[53 FR 19182 and 19204, May 26, 1988, as amended at 53 FR 19185, May 26, 1988]

Subpart D—Suspension

§ 24.400 General.

(a) The suspending official may suspend a person for any of the causes in § 24.405 using procedures established in §§ 24.410 through 24.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 24.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33050, June 26, 1995]

§ 24.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 24.400 through 24.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 24.305(a); or

(2) That a cause for debarment under § 24.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 24.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* HUD shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 24.411 through § 24.413.

[53 FR 19182 and 19204, May 26, 1988, as amended at 60 FR 33050, June 26, 1995]

§ 24.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That the suspension has been imposed;

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(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 24.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 24.411 through 24.413 and any other HUD procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

[60 FR 33050, June 26, 1995]

§ 24.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) The information and argument should be addressed to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(2) If the respondent does not contest the suspension within the 30 day period, the suspension shall become final.

(3) If the respondent desires a hearing, it shall submit a written request to the Debarment Docket Clerk within the 30-day period following receipt of the notice of suspension.

(4) The parties may agree to engage in an alternative dispute resolution, including informal conference, mediation, conciliation, summary trial with binding decision, minitrial, or use of a settlement judge.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with

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a representative, submit documentary evidence, present witnesses, and confront any witnesses the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(i) Upon the agreement of the parties, the additional proceedings may be recorded using audiotape without transcription. The audiotape shall be made available at cost to the respondent.

(ii) [Reserved]

[60 FR 33050, June 26, 1995]

§ 24.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (see § 24.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions based upon an indictment, conviction, or civil judgment, in which there is no genuine dispute over material facts, or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(1) The suspending official may, in his or her discretion, refer actions